

SERVICE DATE - AUGUST 28, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-20968

NATIONAL EXPRESS GROUP PLC, ET AL.--CONTROL EXEMPTION--SCHOOL
SERVICES AND LEASING, INC., ET AL.

Decided: August 25, 2000

By petition filed on May 31, 2000, National Express Group plc (NEG) and National Express Corporation (NEC), noncarriers, seek an exemption, under 49 U.S.C. 13541, from the prior approval requirements of 49 U.S.C. 14303(a)(5), to acquire control of five motor passenger carriers.

Notice of the exemption petition was served and published in the Federal Register on June 30, 2000 (65 FR 40725). A copy of the notice was also served on the Federal Motor Carrier Safety Administration (FMCSA) and the Office of the General Counsel in the U.S. Department of Transportation, and on the Antitrust Division in the U.S. Department of Justice. No comments have been filed in response to the notice. Based on our review of the record, we will grant the petition.

BACKGROUND

NEG, an English corporation, and NEC, a Delaware corporation controlled by NEG (collectively, petitioners),¹ seek to acquire control of the following five motor passenger carriers (collectively, carriers): School Services and Leasing, Inc.;² School Services and Leasing of

¹ Petitioners' existing subsidiaries include: ATC Vancom, Inc., Kenneth E. Bauman Bus, Inc., Durham Transportation, Inc., Crabtree-Harmon Corporation, Forsythe & Associates, Inc., Multisystems, Inc., and Robinson Bus Service, Inc. All of these subsidiaries provide non-regulated transportation services, although Robinson Bus Service, Inc., holds motor carrier authority in Docket No. MC-2844 (Sub-No. 7). NEG conducts a portion of its operations in North America through its wholly owned subsidiary, Nexus Investment General Partnership (NIGP), a Nevada general partnership, in which the only partners are two United Kingdom companies, both of which are wholly owned by NEG.

² School Services and Leasing, Inc. (School Services of Kansas), is a Kansas corporation. It holds federally issued operating authority in Docket No. MC-250907, which authorizes it to carry passengers for hire in interstate commerce, but it primarily provides non-regulated school transportation services.

Massachusetts, Inc.;³ Student Bus Services, Inc.;⁴ Helweg and Farmer Transportation Company, Inc.;⁵ and Swope Farm & Livestock Company, Inc.⁶

Petitioners will acquire control of the carriers through the acquisition by NEC of all of the issued and outstanding capital stock of School Services of Kansas and Helweg. Indirect control of the other three carriers, School Services of Massachusetts, Student Bus Services, and Swope, will result from the acquisition of the stock of the parent corporations.⁷ The transaction will be accomplished pursuant to a Share Purchase and Sale Agreement dated May 26, 2000, by and between NEC and Graydon J. Kincaid, Jr., the registered and beneficial owner of all of the issued and outstanding shares of capital stock of School Services of Kansas and Helweg. Upon completion of the acquisition of the stock, NEC will operate the carriers.

Petitioners state that the proposed transaction will have only an incidental effect on regulated transportation because the carriers involved provide primarily non-regulated school transportation services. Petitioners estimate that only about 5% of the revenues generated by the carriers are derived from regulated operations.

³ School Services and Leasing of Massachusetts, Inc. (School Services of Massachusetts), is a Massachusetts corporation and is a wholly owned subsidiary of School Services of Kansas. It is primarily a provider of non-regulated school transportation services.

⁴ Student Bus Services, Inc. (Student Bus Services), is a Connecticut corporation and is a wholly owned subsidiary of School Services of Kansas. It is primarily a provider of non-regulated school transportation services.

⁵ Helweg and Farmer Transportation Company, Inc. (Helweg), is a New Mexico corporation. It holds federally issued operating authority in Docket No. MC-337007 and has applied to FMCSA for authority to operate as a motor passenger contract carrier, but it is primarily a provider of non-regulated school transportation services.

⁶ Swope Farm & Livestock Company, Inc. (Swope), is a New Mexico corporation and is a wholly owned subsidiary of Helweg. It holds federally issued operating authority in Docket No. MC-128026, but it is primarily a provider of non-regulated school transportation services.

⁷ The appropriate filing has been made under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, with respect to that portion of the transaction that involves NEG's control of non-federally regulated entities.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 14303(a)(5), a noncarrier that controls any number of carriers may not acquire control over another carrier without our approval. However, under 49 U.S.C. 13541(a), we must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the transportation policy of 49 U.S.C. 13101; (2) either (a) regulation is not necessary to protect shippers from the abuse of market power, or (b) the transaction or service is of limited scope; and (3) exemption is in the public interest.

Transportation Policy. Detailed scrutiny of this transaction under 49 U.S.C. 14303 is not necessary to ensure the development, coordination, and preservation of a transportation system that is consistent with the policy contained in 49 U.S.C. 13101(a)(1). Exempting this transaction will permit the petitioners to use their buses to perform regulated charter and special operations services when their buses would otherwise be idle, thereby promoting economical and efficient transportation services [49 U.S.C. 13101(a)(1)(B)]. Petitioners have certified that there will be no change in operations or employment levels, other than at the senior management levels; therefore, the proposed exemption will also encourage fair wages and working conditions in the transportation industry [49 U.S.C. 13101(a)(1)(F)]. Other aspects of 49 U.S.C. 13101(a)(1) will not be affected adversely.

Similarly, detailed scrutiny under 49 U.S.C. 14303 is not necessary to promote competitive and efficient transportation services consistent with the policy in 49 U.S.C. 13101(a)(2). By permitting the more efficient use of expensive rolling stock and enhancing the petitioners' ability to meet the needs of the charter and special operations bus market, the exemption will promote efficiency in the motor passenger carrier industry responsive to the needs of passengers and consumers, allow the most productive use of equipment, and improve and maintain a sound and competitive privately owned motor carrier system [49 U.S.C. 13101(a)(2)(B), (C), (E) and (I)]. Other aspects of 49 U.S.C. 13101(a)(2) will not be affected adversely.

Finally, because this proceeding does not implicate state regulatory initiatives, detailed scrutiny under 49 U.S.C. 14303 is not necessary for consistency with the intrastate aspects of the policy in 49 U.S.C. 13101(a)(3).⁸

Based on the above considerations and the absence of any opposition, we find that regulation of the proposed transaction is not necessary to carry out the goals of the transportation policy of 49 U.S.C. 13101.

⁸ The transportation policy in 49 U.S.C. 13101(a)(3) for motor passenger carriers requires cooperation with the states to ensure that state regulation does not undermine federal policy objectives.

Abuse of Market Power. Regulation is not necessary to protect passengers from the abuse of market power. The petition for exemption is unopposed and the proposed transaction will have no adverse impact on competition. To the contrary, it appears that to the extent the proposed transaction has any competitive impact on the motor passenger industry, it will be in the form of a modest increase in competition at the low end of the regulated charter and special operations spectrum. School buses cannot compete with normal motor coaches in terms of passenger comfort, and daily school schedules make it impossible to use school buses on extended trips during most of the year. It is unlikely that the transactions will enhance petitioners' ability to penetrate the charter and special operations market much less abuse market power.

Further, each of the carriers to be acquired holds a relatively small market share of the transportation services available to its potential passengers. Moreover, the industry's low entry barriers and pervasive intermodal competition effectively foreclose any opportunity for abuse of market power.

Given our finding regarding the probable effect of the proposed control transaction on market power, we need not determine whether the proposed control transaction is limited in scope.

Public Interest. Exempting this transaction from regulation is consistent with the public interest. Subjecting the proposed transaction to detailed scrutiny would serve no meaningful public policy or regulatory purpose and would be wasteful of our resources, those of the petitioners, the carriers it proposes to acquire, and the public. On the other hand, an exemption will have multiple benefits relating to adequate transportation services, efficient and economic operations, employees, and will not give rise to market abuse or problems that might warrant regulatory scrutiny. Accordingly, we will grant the requested exemption.

In addition, under the preemptive provisions of 49 U.S.C. 14303(f), an exemption will insulate the petitioners from those state and local regulations applicable to intrastate operating authorities that otherwise might interfere with their ability to consummate these transactions and operate to the fullest extent possible.

In accordance with petitioner's request for expedited handling, we will make the exemption effective on the service date of this decision.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 13541, the acquisition of control by National Express Group plc and National Express Corporation of School Services and Leasing, Inc., School Services and Leasing of Massachusetts, Inc., Student Bus Services, Inc., Helweg and Farmer Transportation Company, Inc., and Swope Farm & Livestock Company, Inc., is exempted from the prior approval requirements of 49 U.S.C. 14303(a)(5).

2. This exemption is effective on August 28, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary